

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 03M-25

In the Matter of)	02395
)	
FAMILY BROADCASTING, INC.)	
)	EB Docket No. 01-39
Order to Show Cause Why the Licenses for)	
Stations WSTX(AM) and WSTX-FM,)	
Christiansted, U.S. Virgin Islands,)	
Should Not Be Revoked)	

O R D E R

Issued: July 1, 2003

Released: July 3, 2003

On June 23, 2003, the parties to this proceeding filed Status Reports in which they ask for further unspecified postponement of a hearing date in order to complete contemplated assignments that would moot the issues set for hearing.

By *Order* FCC 03M-09, released February 26, 2003, at the request of the parties, this proceeding was held in abeyance pending disposition of proposed applications to assign the licenses for Stations WSTX/WSTX-FM from Family Broadcasting, Inc. ("Family") to Caledonia Communications Corporation ("Caledonia") in accordance with the Commission's Minority Distress Sale Policy ("Distress Sale Policy").

It has been reported that on March 4, 2003, Family and Caledonia filed their applications. On April 14, 2003, Joseph Bahr filed an informal objection. On April 18, 2003, Robert Hoffman, a resident of St. Croix, filed a petition to deny. Both Mr. Bahr and Mr. Hoffman challenge the *bona fides* of the proposed distress sale. Mr. Hoffman also argues that a grant of assignment for Station WSTX-FM would violate the Commission's multiple ownership rules. 47 C.F.R. § 73.3555. Caledonia has filed timely its oppositions to both the informal objection and to the petition to deny. The questions on assignment are now before the Media Bureau for disposition.

In another key development, on June 2, 2003, the Commission adopted a *Report and Order* in MB Docket No. 02-277 and in MM Docket Nos. 01-235 and 00-224, revising the multiple ownership rules. That same day, the Media Bureau issued *Public Notice*, DA 03-1877, which states with respect to pending applications:

Pending Applications Applicants with long-form assignment or transfer of control applications --- that are pending as of adoption of the *Order* ("Pending Applications") may amend those Applications by submitting new multiple ownership showings to demonstrate compliance with the ownership rules adopted in the *Order* or by submitting a request for waiver of the new rules. [Footnote omitted.] Parties may file such amendments once notice has been published by the Commission in the *Federal Register* that OMB has approved the information collection requirements contained in such amendments. Pending Applications that are still pending as of the effective date of the new rules will be processed under the new rules ---.

Pending Petitions and Objections. Petitions to deny and informal objections that were submitted to the Commission prior to the adoption date of the *Order* and that raise issues unrelated to competition against Pending Applications (as defined above) will be addressed with respect to those issues at the time we act on such Applications. ---.

It does not appear that the Commission has yet completed the final version of its new multiple ownership rules. Nor is it known whether the new rules will impact the pending assignment applications between Family and Caledonia. The Enforcement Bureau is unable to predict when the Media Bureau will begin its review because it understands that further processing must await release of definitive rules and completion of review by OMB. The parties believe that it may be months before issues raised by the informal objection and petition to deny are resolved.

The Presiding Judge considers this delay to be a matter of concern. This case has been on a license revocation hearing docket since 1996. The parties contend that the proceeding should be continued for a further indefinite period of time in order to accommodate resolution of issues concerning and impacting assignments. The Bureau argues that the applications on their face appear to fall within the parameters of the Distress Sale Policy (sale to minority for 75% of station fair market value). The Bureau also finds a "concrete possibility" for approval of the assignments and argues that there is a "reasonable prospect" that the parties will continue to prosecute their applications and that the Media Bureau ultimately will grant the assignments. Family also represents that Caledonia, the intended assignee, will file appropriate amendments to comply with the new rules on multiple ownership once the new rules are finalized. It also would seem that Messrs. Bahr and Hoffman will be able to amend their pleadings before the decision.

The only reason for granting an indefinite stay is the inability of the parties to define or predict the amount of time it will take to receive a final determination on yet to be perfected assignment applications. Returning to the history of this case, Family's licenses were first put into hearing on May 30, 1996. A former Presiding Judge permitted Family to retain the licenses *Family Broadcasting, Inc.*, 11 F.C.C. Rcd 18700 (Admin. L.J. 1997). On February 8, 2001, the Commission commenced a second revocation proceeding *Family Broadcasting, Inc.*, 16 F.C.C. Rcd 4330 (2001), *recon denied*. 16 F.C.C. Rcd 12801 (2001). The current Presiding Judge issued a Summary Decision on March 28, 2002, which was affirmed in part and remanded in part by the Commission. *Family Broadcasting, Inc.*, 17 F.C.C. Rcd 6180 (2002).

The Presiding Judge was also requested to disqualify himself which caused additional delay *Family Broadcasting, Inc.*, 17 F.C.C. Rcd 19332 (2002).

Rulings

The Commission is concerned with the "proper dispatch of business." 47 U.S.C. §154 (j). The Commission has in the past ordered cases reassigned in view of that standard, even though the presiding judges were not disqualified. *See James A. Kay, Jr.*, Order FCC 98-274, released October 19, 1998. *See also KAYE Broadcasters, Inc.*, 46 F.C.C. 2d 600, 604 (1974). There is concern here for the proper dispatch of this case, and timeliness of resolution must be weighed against factors cited by the Bureau with respect to resources expended in litigation. The appropriate solution at this point appears to be the setting of a future hearing date far enough ahead that should allow resolution of the assignment applications, as well as the issues raised in opposition to assignments.¹

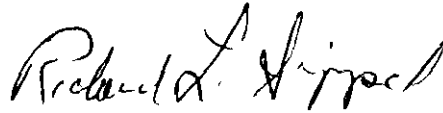
Accordingly, IT IS ORDERED that the Status Reports of the parties filed on June 23, 2003, ARE ACCEPTED

IT IS FURTHER ORDERED that there will be a Hearing Status Conference held on **December 16, 2003, at 9:30 a.m.** in an OALJ Courtroom in Washington, D.C.

¹ The hearing was suspended on February 26, 2003, the "eve of trial". It was expected that assignments would be completed by May 26, 2003. *See Order*, FCC 03M-09, released February 26, 2003. It now seems reasonable to expect finality before next year, 2004.

IT IS FURTHER ORDERED that this case is set for hearing on **January 13, 2004, at 9:30 a. m.** in an OALJ Courtroom in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION²

A handwritten signature in black ink, appearing to read "Richard L. Sippel", written in a cursive style.

Richard L. Sippel
Chief Administrative Law Judge

² Courtesy copies of this Order were e-mailed or faxed to counsel for the parties on date of issuance, and to counsel for Caledonia.